

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

COMPREHENSIVE COMMUNITY
ACTION PROGRAM

Employer

and

BRENDA LEONE, an Individual

and

RHODE ISLAND LABORERS' DISTRICT
COUNCIL, LABORERS'
INTERNATIONAL UNION, AFL-CIO

Union

Case 1-RD-1984

DECISION AND DIRECTION OF ELECTION

This case presents the issue of the supervisory and managerial status of Brenda Leone, a health manager/registered nurse (RN) in a Head Start program operated by Comprehensive Community Action Program (CCAP) in Cranston, Rhode Island. On March 20, 2001, I certified the Rhode Island Laborer's District Council, Laborers' International Union (Union), as the bargaining representative of a unit of professional and nonprofessional employees employed by the Head Start Program, including RNs. On March 22, 2002, Leone filed this petition in which she seeks a decertification election. A hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.¹

¹ Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Union contends that the petition should be dismissed on the ground that the Petitioner, Leone, is the statutory supervisor of three employees in the bargaining unit: licensed practical nurse (LPN) Sharon Trindade and two food prep workers. The Union also contends that the petition should be dismissed on the ground that Leone is a managerial employee who formulates and effectuates CCAP policies. CCAP asserts that she is a nonsupervisory, nonmanagerial employee in the bargaining unit. I find that Leone is a nonsupervisory, nonmanagerial employee and will direct an election in the previously certified unit.²

Background

CCAP offers several programs designed to assist low-income families in its catchment area consisting of Cranston, Coventry, Scituate, and Foster, Rhode Island. CCAP is headed by a Board of Directors and by Executive Director Joanne McGunagle. Among the services it provides are various programs for young children, including Head Start, Early Head Start, and day care, referred to herein collectively as Head Start. Antonia Enright is currently the Head Start Director. The Head Start program operates at three locations in Cranston. The Atwood Avenue location serves 163 children, the Gansett Avenue location serves about 70 children, and the Norwood Avenue location serves 34 children.³ Enright is responsible for operations at Atwood Avenue, while site manager Donna Lee Wilson, who reports to Enright, is responsible for operations at Gansett Avenue. The Head Start program employs about seventy employees, about sixty of whom are in the bargaining unit represented by the Union.⁴

² Each party makes an assertion based upon a negotiated matter in support of its position. CCAP points to the fact that, in February 2001, the Union executed a stipulated election agreement in which it agreed to include the classification of registered nurse in the unit and also agreed to include Leone on the “Norris-Thermidor” list used in the subsequent election. The Union asserts that at an October 2001 contract negotiation session, CCAP’s attorney proposed to amend the NRLB certification to exclude Leone and six other individuals as managers, and that the parties reached a tentative agreement to exclude them once the parties had achieved agreement on a contract, which they never did. I decline to rely on either party’s assertion regarding previous positions taken by its opponent in this matter. A finding of supervisory or managerial or employee status must turn only on the actual duties and responsibilities of the individual in dispute.

³ In a post-hearing stipulation, the parties stipulated, and I find, that the Norwood location, which was not included in the original bargaining unit, shall now be included in the unit.

⁴ The bargaining unit includes RNs, LPNs, teachers, teacher assistants, family advocates, secretaries, data entry clerks, systems administrators, service delivery assistants, fiscal managers, food prep workers, janitors, and bus drivers. Leone is the only RN in the unit, and Trindade is the only LPN.

RN Brenda Leone, whose title is health manager, is the nurse for the Atwood Avenue and Norwood Avenue facilities. She reports to Enright. She is responsible for assessing the children's health. In this regard, she tracks their height, weight, vision, hearing, lead levels, and iron levels, and evaluates their developmental abilities. She monitors whether or not the children have had the necessary physical examinations and immunizations. She administers prescribed medications and first aid as needed. She identifies health conditions, initiates health referrals, and communicates to parents and staff regarding health conditions. She provides home visits as needed. She conducts workshops for parents and staff regarding health issues about every other month. She spends about 95 percent of her time on these duties.

Supervisory status

Facts

Authority to responsibly direct

LPN Sharon Trindade is the nurse for the Gansett Avenue facility.⁵ Trindade performs essentially the same duties at Gansett Avenue as Leone does at the Atwood Avenue facility. She identifies health conditions, initiates health referrals, administers treatments and medications to the children, and tracks the children's physicals and immunizations. She performs vision, hearing, height, and weight screenings. She performs monthly case reviews for each child, communicates to parents and staff regarding health conditions, and facilitates workshops regarding health conditions. She reports to site manager Donna Lee Wilson on a daily basis; Wilson approves Trindade's timecards and requests for time off. Trindade reports to Leone with respect to nursing matters and testified that she considers Leone to be her supervisor.

With regard to Leone's direction of Trindade's work, Trindade, who has performed her current duties for several years, testified that she knows what she has to do each day. She does not check with Leone before administering treatments and medications. Leone comes to Gansett Avenue to meet with Trindade every week or two to go over the health needs of the children.⁶ Trindade turns to Leone for answers to nursing questions. For example, she called Leone to ask whether a ban on peanut butter should be lifted after the children who were allergic to peanut butter had stopped attending Head Start. Leone told her that the policy would remain in place. Leone assigned Trindade to read a book concerning the digestive system to the children at

⁵ The parties have stipulated, and I find, that RN Brenda Leone is a professional and that LPN Sharon Trindade is a nonprofessional employee.

⁶ Trindade testified that she and Leone once had "supervisory" meetings but they were discontinued at some point, although she does not know why. The record does not reveal how these "supervisory" meetings were different from her current meetings with Leone.

Gansett, as part of a curriculum that the two were implementing at both sites. Trindade is required to complete a monthly report regarding the health status of the children at Gansett Avenue and turn it in to Leone. Under the terms of one of Trindade's previous evaluations, Trindade must be supervised by an RN in conducting Head Start's annual tuberculosis clinic.

The Atwood Avenue facility employs two food prep workers, Ann Strolen and Joann DiIorio, who are responsible for serving breakfast, lunch, and snacks to the children and for cleaning up.⁷ They currently report to Toni Enright.⁸ Enright approves their time cards and overtime, as well as their vacations and other requests for time off. Enright testified that she would assign them any new duties.

Leone interacts with Strolen and DiIorio with respect to the health and nutritional aspects of the food service. Leone testified that she goes to the kitchen as needed, anywhere from once a week to once a month. She discusses the nutritional value of the snacks and informs the food servers about any children who have food allergies. DiIorio testified that there was a child who was allergic to peaches, and she and Strolen called Leone to inquire if it would be all right to serve the child apricots. They may call Leone if they think the food looks bad or have a question about what snacks to get. Leone testified that Strolen and DiIorio have worked for Head Start for many years⁹ and do not need to be told how to do their job.¹⁰

Authority to adjust grievances

Leone testified that she has never adjusted grievances and is not authorized to do so, but she did participate in a meeting regarding a grievance lodged by Trindade. Trindade's title for several years was "health coordinator" and/or "health manager." Both she and Leone reported to the Head Start Director. In 2000, former Head Start Director Jeannie Rheaume told Trindade that the federal agency that funds Head Start wanted to know why the Head Start program had two health managers. As a result,

⁷ The parties have stipulated, and I find, that the food prep workers are nonprofessional employees.

⁸ The Head Start Program used to cook the food on site. At that time, Strolen was the cook and DiIorio was the assistant cook/food server. DiIorio reported to Strolen and Strolen performed her annual evaluations. About two years ago, a former Head Start Director informed the two that the program would no longer cook meals on site and that the Cranston School Department would begin to cater in the meals. At that time Strolen became a food server and both Strolen and DiIorio began to report to the Head Start Program Director.

⁹ They were hired by a previous Head Start director, not by Leone.

¹⁰ Trindade performs a similar role with respect to the food prep worker at Gansett Avenue, Lorraine Lee, in that she assists her with nutritional decisions and informs her of any food allergies. Unlike Leone, however, Trindade does not perform the annual evaluation of the food prep worker at her location. Site manager Donna Lee Wilson signs Lorraine Lee's timesheets.

CCAP had determined that, from then on, Leone would be the only health manager. Trindade would be the assistant health manager and report to Leone. Trindade's responsibilities were to remain the same, with the added responsibility of overseeing the kitchen staff at Gansett Avenue. Trindade commented in her 2000 evaluation that she felt she had been given a demotion and requested a written explanation. She had a meeting with Leone and Rheume, in which she asked that her title be change to "nurse" rather than assistant health manager. Rheume agree to grant her request and asked Leone to put her approval in writing. On July 11, 2000, Leone wrote a letter to Trindade stating that Rheume had approved her request to have her title changed to "nurse," subject to the final approval of the "leadership group." She stated that Trindade would continue to be part of the "management team" and that her input at management meetings was extremely important. Leone gave the letter to Rheume, who gave it to Trindade. Trindade's duties and responsibilities have remained the same since the title change.

Authority to evaluate

Leone has performed Trindade's annual evaluation for the last two years, since Trindade began to report to her. According to the CCAP personnel manual, annual evaluations are to be prepared by the employee's "immediate supervisor." The evaluation form includes various narrative sections regarding past and future goals and results and comments. It also includes fifteen criteria for which the evaluator rates whether the employee "exceeds expectations," "meets expectations," or "needs development," as well as an overall performance summary which the evaluator rates as "strong," "above standard," "standard," "below standard," or "poor." There is a space at the end of the evaluation form in which to indicate "merit range" and "merit raise." Leone does not fill in the sections regarding merit raises and testified that she has never been told that the way she rates an employee correlates to the amount of the merit increase. For Trindade's May 2000 evaluation, the range was 2.6 to 3 percent, and the merit raise was 3 percent. No merit range or merit raise was indicated for the May 2001 evaluation. Enright testified that the merit raises for that year have not yet been determined. After completing Trindade's evaluations in May 2000 and May 2001, Leone gave them to Jeannie Rheume, who was then the Head Start Director.¹¹ Leone testified that the evaluations were returned to her unchanged in any way, and she then presented them to Trindade.

Enright testified that she reviews evaluations but does not sign them. She fills in the "merit range" and "merit increase." The bottom of the range is a cost-of-living increase that is determined by the federal government, which funds Head Start. The top of the range is set by the CCAP Board of Directors. Enright determines the merit raise by considering the evaluation and any discussions with the evaluator, her own daily observations, and comments by others about the employee being evaluated. The evaluations do not include a "score" and there is no automatic correlation between the ratings and the amount of the raise. After filling in the merit raise, Enright sends the

¹¹ Enright has been Head Start Director for one year. Jeannie Rheume was the director for two years before Enright, and Mary Legacy was the director for thirty years prior to that.

evaluations to Joanne McGunagle, the executive director of CCAP, who signs them and on very rare occasions has changed the amount of the merit raise.¹²

Leone has performed Strolen's and DiIorio's annual evaluations for the last two years. The process is the same as described above for Trindade. Leone did not recommend the amount of any merit raise for the two food servers in the evaluations, nor did her ratings automatically correlate with the amount of any increase.¹³ Leone has no authority to discipline or discharge the food prep workers.

C. Secondary indicia

Leone, Trindade, Strolen, and DiIorio are all hourly paid. Leone earns about \$15.45 per hour, Trindade earns \$12.98 per hour, Strolen earns \$9.27 per hour, and DiIorio earns \$7.25 per hour. All Head Start employees receive the same benefits.

The Head Start Program holds weekly "management" meetings that are attended by specialists from each content area, such as education, social services, transportation, health, mental health, parent involvement, and disabilities. The Head Start Program refers to these individuals as managers, and Leone attends as the Health Manager.¹⁴ The meetings generally concern programmatic issues rather than personnel issues.

The minutes for the management meeting held on February 6, 2001 indicate that there was a discussion regarding the formation of the union, noting the date and time of the upcoming NLRB election, and indicating that the managers should think about who would be appropriate to sit at the election¹⁵ and who would be appropriate for the bargaining unit. The minutes for the February 15, 2001 management meeting indicate that the participants discussed strategies to inform staff of the advantages of the CCAP benefits that already exist. The minutes of the February 22, 2001 management meeting note that an update on union progress was discussed.

¹² Notwithstanding Enright's testimony that the evaluations would go from Leone to the Head Start Director to McGunagle, McGunagle appears to have signed Trindade's 2000 and 2001 evaluations after Trindade signed them. In any event, it is clear that it is the Head Start Director and/or McGunagle, and not Leone, who determines the merit raise and that there is no particular correlation between the ratings on the evaluation and the amount of any increase.

¹³ Strolen's June 2000 evaluation indicates that she received a 3 percent increase, but no merit raise is shown for either Strolen's or DiIorio's June 2001 evaluations, which, as noted above, has not yet been determined.

¹⁴ Trindade used to attend these meetings but chose not to attend any more after she lost the title of "manager," although she was still invited to attend.

¹⁵ This was presumably a reference to the selection of the Employer's observer at the election.

These three meetings were attended by several managers and/or agents of CCAP and Head Start who were not in the bargaining unit, such as CCAP's labor attorney, the human resources director, the associate director, the former Head Start Program Director, education manager, disabilities manager, mental health manager, social service manager, Gansett Avenue site manager, and parent/child center manager. The meetings were also attended by Leone and several other "managers" who were in the bargaining unit, such as the fiscal manager, case manager, transportation manager, parent involvement manager, and assistant education manager.

Conclusion

Pursuant to Section 2(11) of the Act, the term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. Chicago Metallic Corp.¹⁶ The status of a supervisor under the Act is determined by an individual's duties, not by his title or job classification. New Fern Restorium Co.¹⁷ The burden of proving supervisory status rests on the party alleging that such status exists. Tucson Gas & Electric Co.¹⁸ The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. Quadrex Environmental Co.¹⁹

With respect to the authority to "responsibly direct," the Board held until recently that individuals such as charge nurses will not be deemed to have used "independent judgment" when they exercise ordinary professional or technical judgment in directing less-skilled employees to deliver services in accordance with employer-specified standards. In NLRB v. Kentucky River Community Care,²⁰ the Court rejected as inconsistent with the Act the Board's interpretation that the term "independent judgment"

¹⁶ 273 NLRB 1677, 1689 (1985).

¹⁷ 175 NLRB 871 (1969).

¹⁸ 241 NLRB 181 (1979).

¹⁹ 308 NLRB 101, 102 (1992).

²⁰ 532 U.S. 706, 121 S.Ct. 1861, 167 LRRM 2164 (2001).

in Section 2(11) excludes professional judgments.²¹ It noted, however, that 1) it is within the Board's discretion to determine, within reason, what scope of discretion qualifies, and 2) as reflected in the Board's phrase, "in accordance with employer-specified standards," the degree of judgment that might ordinarily be required to conduct a particular task may be reduced below the statutory threshold by detailed orders and regulations issued by the employer.²²

I find that the degree of judgment exercised by Leone in directing Trindade, Strolen, and DiIorio is not sufficient to constitute statutory authority. Trindade works fairly independently at another facility and is visited by Leone only once every week or two. She has been a nurse at Head Start for several years and knows what to do on a daily basis. I do not find that assigning Trindade a particular book to read to the children requires any independent judgment, and Leone's communication to Trindade that the peanut butter ban would remain in place merely involved relaying a decision made by the Health Advisory Committee. In fact, with the exception of the fact that Leone must supervise Trindade at an annual tuberculosis clinic and that Leone has some additional administrative duties, it appears that their nursing duties are identical and that, but for the funding agency's insistence that there be only one "health manager," they would both still be "health managers." Similarly, Leone's occasional interactions with the food prep workers regarding the nutritional aspects of the food served does not rise to the level of supervisory authority, nor does it require much independent judgment to inform them that a child who is allergic to certain foods should not be served those foods.

There is no evidence that Leone has any authority to adjust grievances. Her role with respect to Trindade's complaint about her title demonstrates that it was only the Head Start Director who had authority to grant Trindade's request to change her title, and even Rheume's authority was subject to approval of the "leadership group." Thus, although Leone wrote a letter to Trindade notifying her of the approval of her request, it was Rheume that actually granted the request and asked Leone to write the letter.

Leone's role in completing annual performance evaluations for Trindade, Strolen, and DiIorio cannot be the basis for a finding of supervisory status, because there is no evidence that the ratings she gives in the evaluations directly correlate to the amount of a merit increase or any other reward or adverse action. The Board has consistently declined to find supervisory status when employees such as charge nurses perform evaluations that do not, by themselves, affect other employees' job status. Hillhaven Rehabilitation Center.²³ Here, Leone makes no recommendation in the evaluations as to the amount of any wage increase, nor are her ratings converted into a "score" that

²¹ 121 S.Ct. 1861, 1867-1871. However, the Court upheld the Board's rule that the burden of proving supervisory status rests with the part asserting it. 121 S.Ct. at 1866.

²² Id. at 1867, citing Chevron Shipping Co., 317 NLRB 379, 381 (1995).

²³ 325 NLRB 202, 203 (1997).

automatically determines the amount of any increase. Cf. Bayou Manor Health Center²⁴ (LPNs who complete evaluations are supervisors where specific percentage wage increases correspond to employees' scores on their evaluations).

Finally, the fact that Leone is higher paid than Trindade, Strolen, and DiIorio, and that she attends weekly "management" meetings are merely secondary indicia that cannot establish supervisory evidence in the absence of evidence that she possesses any one of the several primary indicia of supervisory status enumerated in Section 2(11). Ken-Crest Services.²⁵ I note, in any event, that the management meetings are also attended by various other bargaining unit members.

Managerial status

Facts

Leone is responsible for "developing and directing" a Health Advisory Committee that is composed of Head Start parents, nursing professors from the University of Rhode Island, a doctor from the CCAP health center, some CCAP managers, Leone, and Trindade.²⁶ Teachers may also attend the meetings if they have an issue to discuss. The Health Advisory Committee meets at least twice a year and must approve any policies and procedures concerning the children's health. Leone is responsible for recruiting and appointing the members of the Committee. She chairs the meetings, sets the agenda, and sends minutes of the meetings to employees. Another group, the Policy Council, which is composed only of Head Start parents, must approve all policies and procedures regarding children's health.²⁷

From time to time Leone issues memoranda to Head Start staff or parents regarding Head Start health care policies, including such matters as medication policies or policies regarding how long children with conditions such as fever, diarrhea or vomiting must stay at home. For example, on April 1, 2002 Leone issued a letter to parents describing two cases of a suspicious rash, in which the children were given medication and required to stay at home for 48 hours. She asked the parents to take their children to their pediatrician before bringing them to school if they broke out with this rash. Leone testified that this letter was not approved by Health Advisory Committee, because she is required to notify the families whenever one of the children comes down

²⁴ 311 NLRB 955 (1993).

²⁵ 335 NLRB No. 63, slip op. at 3 (2201).

²⁶ Trindade's job description states that she assists in developing and directing the Health Advisory Committee, but she testified that she does not develop and direct the Committee.

²⁷ The Policy Council must approve all hiring and firing as well as policies and procedures in general.

with a communicable condition so that the other parents can look out for similar symptoms. Trindade would issue the same type of letter to Gansett parents regarding a communicable condition observed there.

On May 3, 2002, she issued a memo to parents advising them that children who come down with a fever while at school will not be transported to school by bus the following day, due to a health policy under which children must be free of fever for 24 hours before returning to school. She also explained that children sent home due to a suspicious rash or other contagious condition must be transported by their parents upon returning to school and bring a pediatrician's note, after which transportation will be provided again, and that she would notify the bus driver of these situations. Leone testified that this memo was not approved by the Health Advisory Committee, because it did not entail a change in policy, and was based on a policy originally approved by the Committee.

Leone has also issued memos to staff announcing new health policies or reminding staff of pre-existing policies. On January 24, 2002, Leone issued a memo stating that the children are not to have peanut butter or any type of nuts due to allergies, noting that the Health Advisory Committee and Policy Council had agreed to establish this policy. On May 14, 2002, Leone issued a memo to all staff advising them that all day care children must be assigned a cot labeled with their name for naps and that the cot must be used only by that child to aid in decreasing the spread of contagious conditions. She reminded the staff that state regulations require that all cots be cleansed after each use with a bleach and water solution so that they will be free of germs. Leone testified that Enright told her to send this memo after a parent complained to Enright that her child was not sleeping on his own mat, and that this memo reaffirmed what was already a standard procedure at Head Start.

Leone "designs" memos of agreement with various health professionals in the community who provide services to the program. The record does not reveal the terms of these agreements. Leone also recruits health professionals to volunteer to provide health education at an annual health fair.²⁸

Conclusion

It is well established that employees will be excluded from the unit as managerial employees only if they formulate and effectuate management policies by expressing and making operative decisions of their employer or have discretion in the performance of their jobs independent of the employer's established policy. NLRB v. Bell Aerospace Co.,²⁹ Reading Eagle Co.,³⁰ Ohio River Co.³¹ The party seeking to exclude a class of

²⁸ Trindade assists Leone in recruiting volunteers for the annual health fair. She does not draft memos of agreement with health professionals.

²⁹ 416 U.S. 267 (1974).

employees or particular individuals as managerial has the burden of presenting the evidence necessary to establish such exclusion. Montefiore Hospital & Medical Center.³² I conclude that the Union has failed to meet its burden of demonstrating that Leone is a manager.

The Union asserts that Leone is a managerial employee on the ground that she formulates policy by virtue of her role on the Health Advisory Committee and by issuing memoranda regarding Head Start health care policies. Regarding Leone's role on the Health Advisory Committee, I note that all health care policies must also be approved by the Policy Council, and there is no evidence that Leone plays any role in that body. Third Coast Emergency Physicians, P.A.³³ (physicians on the Senior Advisory Council are not managers, where all of their recommendations are subject to approval by the medical directors, and, as here, the evidence fails to show the extent to which their recommendations are followed). Further, I decline to find managerial authority based on Leone's participation on the Health Advisory Committee, where she is only one member of the committee.³⁴ University of Great Falls³⁵ (decisions or recommendations made by committees only a minority of whose members consist of faculty representatives cannot be said to be faculty decisions or recommendations). Moreover, the Board has declined to find that the participation of medical professionals in various types of committees confers managerial status, where, as here, the functions of the committees do not fall outside professional duties primarily incident to patient care. Joint Diseases, North General Hospital³⁶ (decisions made by ambulatory committee regarding changes in patient care and clinics are concerned with matters within the scope of duties routinely performed by similarly situated professionals and incidental to the physicians' treatment of patients).

Regarding the issuance of memos, to the degree that her memos communicate Head Start's health care policies to the staff or parents, I find that they are the product of the Health Advisory Committee. Leone has no authority to unilaterally promulgate health care policies herself; all health care policies and procedures that she recommends must be approved by both the Health Advisory Committee and the Policy Council.

³⁰ 306 NLRB 871, 872 (1992).

³¹ 303 NLRB 696, 714 (1991).

³² 261 NLRB 569, 572 fn. 17 (1982).

³³ 330 NLRB 756 (2000).

³⁴ I note that Trindade participates in the committee as well, but the Union makes no claim that she is a manager by virtue of her participation.

³⁵ 325 NLRB 83, 95 (1997).

³⁶ 288 NLRB 291, ALJD at 298-99 (1988), distinguishing FHP, Inc., 274 NLRB 1141 (1985), in which staff physicians served on committees that engaged in detailed, nonpatient-related decisionmaking.

Neighborhood Legal Services, Inc.³⁷ (attorneys are not managers, where only the executive director and/or the board of directors makes final decisions regarding management policies and attorneys play at best a professional advisory role). With respect to Leone's memos to parents notifying them of cases of communicable diseases among children at the program, the Board has held that only if an employees' activities fall outside the scope of the duties routinely performed by similarly situated professionals will they be found to be aligned with management. Wordsworth Academy.³⁸ I find these types of communications to be a routine discharge of Leone's professional duties as a nurse.³⁹

The Union also asserts that Leone is a managerial employee because she “designs” memoranda of agreement with health professionals in the community and attends the weekly management meetings. I decline to find managerial status on the basis of her authority to draft memos of agreement, where there is no evidence regarding the contents of the agreements and no evidence regarding whether or not Leone has authority to enter into such agreements on behalf of CCAP without review by a higher authority. Her role in attending management meetings does not confer managerial status, because there is no evidence that the individuals who attend these meetings formulate policies on behalf of Head Start. I note that the Union does not maintain that several other bargaining unit members who also attend the management meetings are managerial employees.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time professional and nonprofessional employees employed by the Employer in its Head Start Program at its Atwood Avenue, Gansett Avenue, and Norwood Avenue facilities in Cranston, Rhode Island, including registered nurses, teachers, licensed practical nurses, teacher assistants, family advocates, secretaries, data entry clerks, systems administrators, service delivery assistants, fiscal managers, food prep workers, janitors and bus drivers, but excluding all social service managers, mental health managers, educational managers, program directors, disabilities managers, project coordinators, site managers, and all other employees, managerial employees, confidential employees, guards and supervisors as defined in the Act.

³⁷ 236 NLRB 1269, 1273 (1978).

³⁸ 262 NLRB 438, 443 (1982), citing NLRB v. Yeshiva University, 444 U.S. 672, 690 (1980).

³⁹ I note that Trindade sends similar communications to the parents at the Gansett Avenue facility.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by Rhode Island Laborers' District Council, Laborers' International Union of North America, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before June 13, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by June 20, 2002.

/s/ Rosemary Pye

Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 6th day of June, 2002.

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